

Monday, August 3, 2009

Division One

**A119365 – Susan David et al., v. Wendy Alter Hermann.**

The orders of March 9, 2007, and July 20, 2007, are reversed, and the case is remanded with directions to prepare a statement of decision for those orders.<sup>1</sup> Marchiano, P.J., We Concur: Margulies, J., Graham, J.<sup>2</sup> (Not for Publication.)

**A123319 – Fred Conner, v. Whiteley Tire and Oil Company.**

The judgment is affirmed. Costs on appeal are awarded to Whiteley. Ruvolo, P.J., We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Tuesday, August 4, 2009

Division One

**A124785 – E.J., v. Superior Court for The City and County of San Francisco, City and County of San Francisco, Department of Human Services, R.P.I.**

The request for stay is denied and the petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) The decision is final in this court immediately. Graham, J.<sup>3</sup> We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A122015 – In re the Marriage of Hugues Durand and Elise Latedjou-Durand. Hugues Durand, v. Elise Latedjou.**

The final statement of decision after trial filed April 10, 2008, is affirmed. Graham, J.<sup>4</sup> We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

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<sup>1</sup> In so holding, we express no opinion as to the court's conclusions on the merits.

<sup>2</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>3</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>4</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Wednesday, August 5, 2009

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Margulies, Justice, Graham, Judge of the Marin County Superior Court [Ret.], assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution, Raquel Arellano, Deputy Clerk, and CHP Officer Jeff Borgen, Bailiff.

A120989 People,  
v.  
Lemanuel A. Cox.  
Cause called and argued by James Johnson, counsel for appellant, and Allen Crown, counsel for respondent. Cause ordered submitted.

A123321 James K. Muhammad,  
v.  
Eden House Management.  
Cause called and argued by James Muhammad, appellant in propia persona, and Kevin Berreth, counsel for respondent. Cause ordered submitted.

A121626 SF Wharf Enterprises,  
A122785 v.  
W.W. Wharf GL, Inc. et al.  
Cause called and argued by A. Charles Dell'Ario, counsel for appellant, Edward Smith, counsel for respondent W.W. Wharf GL, Inc., and Joel Zeldin, counsel for respondent Jeffrey Lowenthal. Cause ordered submitted.

A122241 Kudsk Construction,  
v.  
Moraga-Orinda Fire District.  
Cause called and argued by George Wailes, counsel for appellant, and Joseph Quinn, counsel for respondent. Cause ordered submitted.

Continued

A122464 Christine O'Keefe,  
v.  
Rosemary Barker et al.  
Cause called and argued by Gregory Antone, counsel for appellant, and  
Stephen Pahl, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Wednesday, August 5, 2009

The Court convened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Margulies, Justice, Graham, Judge of the Marin County Superior Court [Ret.], assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution, Fred Abad, Deputy Clerk, and CHP Officer James Militar, Bailiff.

A121976 People,  
v.  
Timothy Tucker.  
Cause called and argued by Gene Vorobyov, counsel for appellant, and Sara Turner, counsel for respondent. Cause ordered submitted.

A118430 Jerine Stuart,  
A120610 v.  
Richard Stuart.  
Cause called and argued by Matthew Graham, counsel for appellant, and Michelene Insalaco, counsel for respondent. Cause ordered submitted.

A121943 Johnson Su,  
v.  
Lien Ping Chen et al.  
Cause called and argued by Johnson Su, appellant in propria persona, and Richard Ackerman, counsel for respondents. Cause ordered submitted.

A121847 Public Guardian of the County of Marin,  
v.  
Jacqueline Braun.  
Cause called and argued by Morton Cohen, counsel for appellant, and Jessica Mills, counsel for respondent. Cause ordered submitted.

Court adjourned.

Wednesday, August 5, 2009(Continued)

Division Four

**A121408 – The People, v. Christopher Scott.**

The judgment is affirmed. Sepulveda, J., We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

**A122632 – Louisa Mendoza, v. United Air Lines, Inc., et al.**

The judgment is affirmed. Reardon, Acting P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Thursday, August 6, 2009

Division Three

**A119781 – The People, v. Christopher Sean Hill.**

**A124180 – In re Christopher Sean Hill, on Habeas Corpus.**

The judgment is affirmed. The petition for a writ of habeas corpus is denied without prejudice. Siggins, J., We Concur: Pollak, Acting P.J., Jenkins, J. (Not for Publication.)

Division Four

**A122637 – The People, v. Rafael Favis Luna.**

The judgment is affirmed. Ruvolo, P.J., We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Division Five

**A122252 – Jeffrey A. Conrad, v. Montgomery-Sansome LP et al.**

The orders denying the JNOV motion and granting a new trial are reversed and remanded with directions to the court to: (1) grant defendants' JNOV motion on the claims for wrongful constructive termination and punitive damages; and (2) enter the

resulting judgment for defendants on the claims for wrongful constructive termination and punitive damages. Defendants are awarded costs on appeal. Jones, P.J., We Concur: Simons, J., Bruiniers, J. (Not for Publication.)

**A124569 – In re Jabari W., a Person Coming Under the Juvenile Court Law. The People, v. Jabari W.**

Thursday, August 6, 2009(Continued)

The judgment is affirmed. Bruiniers, J., We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

Friday, August 7, 2009

Division One

**A120302, A122248 – Oliver Hill, v. San Francisco Bay Area Rapid Transit District.**

**A122881 – Oliver Hill, v. San Francisco Bay Area Rapid Transit District, Daniel Robert Bartley, R.P.I.**

The judgment is partially reversed and the case is remanded to the trial court for (1) retrial of Hill's retaliation cause of action limited to the issue of BART's liability under section 12940, subdivision (h) for failing to promote him after August 2004, in accordance with the views expressed in this opinion; and (2) a redetermination of the amount of attorney fees to be awarded to Hill's pretrial and trial counsel. In all other respects, we affirm the judgment. Each party shall bear its own costs on appeal. Margulies, J., We Concur: Marchiano, P.J., Graham, J.<sup>5</sup> (Not for Publication.)

Division Two

**A122400 – In re Laci L. et al., Persons Coming Under the Juvenile Court Law. Lake County Department of Social Services, v. Rochelle P.**

The jurisdiction order is affirmed. The disposition order is reversed and the matter remanded for further proceedings. Kline, P.J., We Concur: Haerle, J., Richman, J. (Not for Publication.)

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<sup>5</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A121719 – In re the Marriage of Ghulam and Fizza Rizvi Nurie. Ghulam Nurie, v. Fizza Rizvi. Ghulam Nurie, v. Fizza Rizvi.**

The judgment is affirmed.<sup>6</sup> Richman, J., We Concur: Kline, P.J., Lambden, J. (Certified for Publication.)

**A123791 – Laurie Marie Laskey, v. Shiloh Group, LLC.**

Friday, August 7, 2009(Continued)

By The Court: Upon review of Shiloh Group's July 31, 2009 letter requesting modification of the opinion, we hereby order that the unpublished opinion filed herein on July 21, 2009, be modified as follows: (See Order.) Thus, our modification of our prior order has no effect on our decision to dismiss the appeal. Lambden, Acting P.J. (Not for Publication.)

Division Three

**A121843 – The People, v. Mark Delroy Daley.**

The judgment is affirmed. McGuiness, P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

Division Four

**A122997 – The People, v. Fernando Barriga Padilla.**

The judgment is affirmed. Ruvolo, P.J., We Concur: Reardon, J., Rivera, J. (Not for Publication.)

**A122600 – In re Joshua J., a Person Coming Under the Juvenile Court Law. The People, v. Joshua J.**

The order is affirmed. Sepulveda, J., We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Monday, August 10, 2009

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<sup>6</sup> Exhibit A to Respondent's Brief is stricken. We deny Wife's request for judicial notice filed December 2, 2008. We have not relied on any exhibits submitted in the writ matter that post-dated the trial court's order.

Division Two

**A121926 – The People, v. Mark D. Sanders.**

The judgment is affirmed. Haerle, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

**A120303 – In re Marriage of Jarmila Jakubcikova and Anatole Olczak.  
Jarmila Jakubcikova, v. Anatole Olczak.**

The judgment is affirmed. Olczak is to pay the costs of appeal. Putman and Olczak are to pay sanctions of \$7,500 to the clerk of this court. All sanctions are to be paid no later than 30 days after the remittitur has issued. Upon return of the remittitur, the Clerk of the Court of Appeal is to forward a copy of this opinion to the State Bar of California, pursuant to Business and Professions Code section 6086.7, subdivision (a)(3).) Lambden, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)



MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION TWO

Monday, August 10, 2009

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Haerle, J., Lambden, J., Officer Lipsey and S. Wheeler, Deputy Clerk.

- A120287     The People,  
              v.  
              Joe E. Moore.  
Cause called and argued by Maria Morga, counsel for appellant, and Eric D. Share, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A119594     The People,  
              v.  
              Brian Thomas Norvell.  
Cause called and argued by James H. Dippery, Jr., counsel for appellant, and Brent W. Wilner, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A120809     The People,  
              v.  
              Tamel Ray Johnson.  
Cause called and argued by Meredith Jones Watts, counsel for appellant, and Christopher J. Wei, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A117629     John Penna,  
A118491     v.  
A118699     Necati Ergur.  
Cause called and argued by Nicholas Damer, counsel for appellant, and Randall Crane, counsel for respondent. Cause ordered submitted.
- A119345     Leonard Whiteley,  
A121027     v.  
              R.J. Reynolds Tobacco Company.  
              Leonard Whiteley

v.

Philip Morris USA Inc.,

R.J. Reynolds Tobacco Company.

Cause called and argued by Henry Joseph Escher III, counsel for appellants, and Madelyn Chaber, counsel for respondent. Cause ordered submitted.

Court recessed until Tuesday, August 11, 2009 at 9:30 a.m.

Monday, August 10, 2009(Continued)

Division Three

**A123674 – In re W.B., a Person Coming Under the Juvenile Court law. The People, v. W.B.**

The orders are affirmed. Pollak, J., We Concur: McGuiness, P.J., Siggins, J.  
(Not for Publication.)

**A123181 – The People, v. Jose Israel Pozos Bravo.**

The judgment is affirmed. Siggins, J., We Concur: Pollak, Acting P.J., Jenkins, J.  
(Not for Publication.)

**A121052, A121716 – In re the Marriage of Laura Lil Yquist and Pietro Dova. Laura Lil Yquist, v. Pietro Dova.**

By The Court: It is ordered that the opinion filed herein on July 24, 2009, be modified as follows: (See Order.) This modification does not effect a change in the judgment. The petition for rehearing is denied. McGuiness, P.J. (Not for Publication.)

Tuesday, August 11, 2009

Division One

**A125304 – P.G., v. Superior Court of The City and County of San Francisco, San Francisco Human Services Agency et al. R.P.I.**

The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888,894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) The decision is final in this court immediately. Marchiano, P.J., We Concur: Margulies, J., Dondero, J. (Not for Publication.)

**A122464 – Christine A. O'Keefe, v. Rosemary barker et al.**

The judgment is affirmed. Marchiano, P.J., We Concur: Margulies, J., Graham.<sup>7</sup>  
(Not for Publication.)

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<sup>7</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION TWO

Tuesday, August 11, 2009

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Haerle, J., Richman, J., Officer Militar and I. Santos, Deputy Clerk.

At this point of the proceedings, Presiding Justice Kline announces that the panel in the first case consists of himself, J. Haerle, and J. Richman, and the panel for the remaining cases on calendar consist of himself, J. Lambden, and J. Richman.

A123168      Michael H. Clement et al.,  
                 v.  
                 Frank C. Alegre.  
Cause called and argued by Samuel Goldstein, counsel for appellant, and Steven Piser, counsel for respondent. Submission deferred for 30 days.\*

At this point of the proceedings, Justice Haerle left the bench and Justice Lambden joined the bench for the remainder of the calendar.

A122987      In re G.M., a Person Coming Under the Juvenile Court Law.  
                 The People,  
                 v.  
                 G.M.  
Cause called and argued by Michael Allen, counsel for appellant, and Jeffrey M. Bryant, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A121536      In re B.P., a Person Coming Under the Juvenile Court Law.  
                 The People,  
                 v.  
                 B.P.  
Cause called and argued by Abigail Rezneck, counsel for appellant, and Michael Banister, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A118633 William Spencer Company,  
v.  
Anning-Johnson company et al.  
Cause called and argued by Timothy L. McInerney, counsel for appellant,  
and Benjamin Johnson, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

\*A123168 (Clement et al. v. Alegre) – Submission was deferred for 30 days, however, an order issued on August 11, 2009 and deferral of submission was vacated. Cause ordered submitted as of August 11, 2009.

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION TWO

Tuesday, August 11, 2009

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco, California. Present: Haerle, Acting P.J., Lambden, J., Richman, J., Officer Lipsey and I. Santos, Deputy Clerk.

- A123291      In re R.G., a Person Coming Under the Juvenile Court Law.  
The People,  
v.  
R.G.  
Cause called and argued by Peter Meadow, counsel for appellant, and Christopher W. Grove, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A118369      The People,  
v.  
Nicholas Eric Appice.  
Cause called and argued by Demetrius Costy, counsel for appellant, and Allan Yannow, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A123296      Estate of Gladys Mildred Lensch, Deceased.  
Jason Lensch et al.,  
v.  
Darin Wright.  
Cause called and argued by Margaret Hand, counsel for appellant, and Elliot Bien, counsel for respondent. Cause ordered submitted.

**COURT ADJOURNED.**

Tuesday, August 11, 2009(Continued)

Division Four

**A123991 – In re Gabriel N., a Person Coming Under the Juvenile Court Law.  
The People, v. Gabriel N.**

The juvenile court's disposition order is affirmed. Ruvolo, P.J., We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Division Five

**A123430 – The People, v. John Soffer.**

The order granting probation is affirmed. Jones, P.J., We Concur: Simons, J., Bruiniers, J. (Not for Publication.)

**A121439 – The People, v. Duane Smith.**

The judgment is affirmed. Bruiniers, J., We Concur: Jones, P.J., Simons, J. (Not for Publication.)

**A123127 – The People, v. Mohammed Faizal Ali.**

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Bruiniers, J. (Not for Publication.)

**A121147 – Jennifer Lin et al., v. The City of Pleasanton, Kay Ayala, R.P.I.**

By The Court: It is ordered that the opinion filed herein on July 16, 2009, be modified as follows: (See Order.) The petition for rehearing is denied. Needham, J. (Certified for Publication.)

Wednesday, August 12, 2009

Division One

**A118430, A120610 – In re the Marriage of Jerine and Richard Stuart. Jerine Stuart. Jerine Stuart, v. Richard Stuart.**

The judgment of dissolution and the subsequent attorney fees order are affirmed. Richard shall recover his costs on appeal. Marchiano, P.J., We Concur: Margulies, J., Graham, J.<sup>8</sup> (Not for Publication.)

Wednesday, August 12, 2009(Continued)

**A124059 – The People, v. Bryan E. Robey.**

After a full review of the record, we find no arguable issues and, accordingly, affirm the judgment. Graham, J.<sup>9</sup> We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

**A123673 – In re R.C., a Person Coming Under the Juvenile Court Law. Contra Costa County Children and Family Services Bureau, v. M.G.**

The order appealed from is affirmed. Haerle, Acting P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

**A119594 – The People, v. Brian Thomas Norvell.**

The trial court judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A120809 – The People, v. Tamel Ray Johnson.**

The judgment is affirmed. Lambden, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A125448 – Iain Conor Ward, a Minor, etc., v. George Lowenthal, as Trustee, etc.**

We hereby dismiss the appeal. Lambden, J., We Concur: Haerle, Acting P.J., Richman, J. (Not for Publication.)

**A122761 – The People, v. Zeiad Salman.**

The trial court's sentencing determination is affirmed. Lambden, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

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<sup>8</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>9</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.



Division Three

**A123348 – In re A.R., a Person Coming Under the Juvenile Court Law. The People, v. A.R.**

The dispositional order is affirmed. Siggins, J., We Concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

MINUTES  
COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Wednesday, August 12, 2009

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Pollak, J., and Jenkins, J.; and B. Robbins, Deputy Clerk.

- A120858 In re the Marriage of Valerie Behrendt and J. Russell Pitto.  
Valerie Behrendt,  
v.  
J. Russell Pitto.  
Cause called and argued by Jon-Marc Dobrin, counsel for appellant, and Richard I Sherman, counsel for respondent. Cause ordered submitted.
- A123634 In re MARRIAGE CASES.  
Cause called and argued by Richard D. Ackerman, counsel for appellant, and David Codell, counsel for respondents Rymer, et al., and Francesca R. Gessner, counsel for respondents Newsom et al. Cause ordered submitted.
- A123740 Rural Media Arts and Education Project,  
v.  
Susan Hildreth.  
Cause called and argued by Amitai Schwartz, counsel for appellant, and Marian E. Mote, counsel for respondent. Cause ordered submitted.
- A119931 First American Title Insurance,  
v.

Access Lending.

Cause called and argued by Kevin Alexander, counsel for appellant, and Michael T. Fogarty, counsel for respondent. Justice McGuiness announced that the panel for this case consisted of himself, Justice Pollak and Justice Siggins. Justice Siggins was away from the court; however, he has read all the briefs, and would listen to the recording of the arguments and conference the case with the assigned panel. Justice Jenkins remained in the courtroom but did not participate. Cause ordered submitted.

At this point in the proceedings, Justice Pollak left the bench. The panel on the final case consisted of Presiding Justice McGuiness, Justice Jenkins and Justice Siggins. Presiding Justice McGuiness repeated that Justice Siggins has read the briefs and would listen to the recording of oral argument and conference the case with the assigned panel members. He also advised the parties that should Justice Siggins have any questions regarding the argument, those questions would be presented to counsel for their response.

Continued

A119681    In re the Marriage of Vincent Carrino and Ann S. Carrino.  
              Vincent Carrino,  
              v.  
              Ann S. Carrino.  
Cause called and argued by Stephanie Finelli, counsel for appellant, and  
Honey Kessler Amado, counsel for respondent. Cause ordered submitted.

Court adjourned.

Wednesday, August 12, 2009(Continued)

Division Four

**A123539 – In re Jason R., a Person Coming Under the Juvenile Court Law.  
Napa County Health & Human Services, v. Jennifer R.**

The order terminating mother's parental rights is affirmed. Sepulveda, J., We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Division Five

**A122506 – Silcor (USA) Inc., v. Land Use Development.**

By The Court: The petition for rehearing is denied. Jones, P.J.

Thursday, August 13, 2009

Division One

**A122581 – In re B.R. et al., Persons Coming Under the Juvenile Court Law.  
Marin County Department of Health and Human Services, v. G.R.**

The juvenile court's order terminating parental rights and referring the minors for adoptive placement is conditionally reversed. The matter is remanded to the juvenile court with directions to proceed in compliance with the notice provisions of the ICWA and Welfare and Institutions Code section 224.2, in accordance with the views expressed in this opinion. If, after proper notice to the Apache tribes, the court finds that the minors are Indian children, the juvenile court shall proceed in accordance with the ICWA and that the minors are not Indian children, the court shall reinstate the order terminating parental rights. Margulies, J., We Concur: Marchiano, P.J., Graham, J.<sup>10</sup> (Certified for Publication.)

**A121976 – The People, v. Timothy Tucker.**

The condition of probation is modified to read: "Defendant is not to engage in any babysitting activities and is not to be in the presence of any person he knows or reasonably should know is under the age of 18 who is not accompanied by a

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<sup>10</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

responsible supervising adult.” As so modified, the judgment is affirmed. Graham, J.<sup>11</sup>  
We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A122889 – The People, v. Wanda Marie McBade.**

Thursday, August 13, 2009(Continued)

The restitution order is reversed. The matter is remanded to the trial court to conduct a further restitution hearing to make findings on the record as to whether, and in what amount, if any, to award restitution for the three categories of losses at issue in this appeal. Graham, J.<sup>12</sup> We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Five

**A121057 – In re the Marriage of Paul Moses and Melanie MacCallum. Paul Moses, v. Melanie MacCallum.**

The order is affirmed. Respondent to recover costs on appeal. Bruiniers, J., We Concur: Jones, P.J., Needham, J. (Not for Publication.)

Friday, August 14, 2009

Division Three

**A123315 – Gina Harpel et al., v. Chris Spina et al.**

The trial court’s orders sustaining the demurrer of R&S without leave to amend; granting the MJOP of Waal without leave to amend; and imposing sanctions on appellants under section 1008, dated September 26, 2008, are affirmed. The order of the trial court, dated July 30, 2008, imposing sanctions on appellants under section 128.7 is reversed. Each party shall bear its costs on appeal. Jenkins, J., We Concur: McGuinness, P.J., Pollak, J. (Not for Publication.)

Division Four

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<sup>11</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>12</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A122344 – The People, v. Lamar Nolan Ryan.**

The judgment – including the sentence – is affirmed. Reardon, Acting P.J., We  
Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Monday, August 17, 2009

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Margulies, Justice, Graham, Judge of the Marin County Superior Court [Ret.], assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution, Fred Abad, Deputy Clerk, and CHP Officer Tom Lipsey, Bailiff.

A123248 People,  
v.  
George Nagatoshi Boyd.  
Cause called and argued by Randall Conner, counsel for appellant, and Lisa Ott, counsel for respondent. Cause ordered submitted.

A122251 Henry Heintz,  
v.  
Charles E. Heintz.  
Cause called and argued by Jeff Needelman, counsel for appellant, and Kyle Fisher, counsel for respondent. Cause ordered submitted.

A120846 Alberto Martinez,  
v.  
P.J. Lumber Inc.  
Cause called and argued by Steven Jacobsen, counsel for appellant, and Shelley Nelson, counsel for respondent. Cause ordered submitted.

A120397 Raffaele Zocca, et al.,  
A122294 v.  
Giovanni Zocca.  
Cause called and argued by Christopher Cole, counsel for appellant, and Arthur Chambers, counsel for respondents. Cause ordered submitted.

Court recessed until 1:30 p.m.

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Monday, August 17, 2009

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Margulies, Justice, Graham, Judge of the Marin County Superior Court [Ret.], assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution, Fred Abad, Deputy Clerk, and CHP Officer Jeff Borgen , Bailiff.

- A119228 People,  
v.  
Aquiør Alfonso Figueroa, Jr.  
Cause called and argued by Dennis Riordan, counsel for appellant, and Sharon Wooden, counsel for respondent. Cause ordered submitted.
- A122262 People,  
v.  
John Lyndon Dean.  
Cause called and argued by Gretchen Franklin, counsel for appellant, and Brent Wilner, counsel for respondent. Cause ordered submitted.
- A117254 People,  
v.  
Luther Peterson.  
Cause called and argued by Scott Sugarman, counsel for appellant, and John Deist, counsel for respondent. Cause ordered submitted.
- A123355 Michael Joseph Johnson,  
v.  
Michael Scott Posey.  
Cause called and argued by Dennis Riordan, counsel for appellant, and J. Anthony Abbott, counsel for respondent. Cause ordered submitted.

Continued



A122385 Michael E. McLaughlin,  
A123924 v.

Granite Excavation, et al.

Cause called and argued by Brendan Begley, counsel for appellants. Michael McLaughlin, respondent in propria persona was not present. Cause ordered submitted.

A121222 Eric Bachelor, et al.,  
v.

Blackhawk Homeowners Association.

Cause called and argued by Thomas Crowell, counsel for appellants, and John Beebe, counsel for respondent. Cause ordered submitted.

Court adjourned.

Tuesday, August 18, 2009

Division Two

**A123771 – Laurie Mari Laskey, v. Platt Electric Supply, Inc.**

The judgment is affirmed. Platt is awarded costs. Lambden, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Division Three

**A122583 – In re Robert T. Preston, on Habeas Corpus.**

The petition for a writ of habeas corpus is denied. McGuinness, P.J., We Concur: Siggins, J., Jenkins, J. (Certified for Publication.)

**A121200 – The People, v. Craig Clark.**

The judgment is affirmed. Jenkins, J., We Concur: Pollak, Acting P.J., Siggins, J. (Not for Publication.)

**A120500 – The People, v. Henry Wallace.**

Appellant's convictions for failure to register (former § 290, subd. (a)(1)(A)) and for failure to annually update his registration (former § 290, subd. (a)(1)(D)) are reversed. In light of these reversals, the matter is remanded to the trial court of resentencing. In all other respects, the judgment is affirmed. Jenkins, J., We Concur: McGuinness, P.J., Siggins, J. (Certified for Publication.)

**A123634 – In re: Marriage Cases.**

The orders directing Campaign for California Families to pay costs are affirmed. City and County of San Francisco and The Rymer/Equality California parties are entitled to costs on appeal. McGuinness, P.J., We Concur: Pollak, J., Jenkins, J. (Not for Publication.)

**A119681 – In re the Marriage of Vincent and Ann Carrino. Vincent Carrino, v. Ann Camino.**

The judgment is affirmed. Ann's protective cross-appeal is dismissed. Ann is awarded her costs on appeal. McGuinness, P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

Tuesday, August 18, 2009

The court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, San Francisco, California. Present: Ruvolo, P.J., Reardon, J., and Rivera, J.; Annie Reasoner, Deputy Clerk; CHP Officer Ricky Franklin, Bailiff.

A118208     People  
              v.  
              Troy Smith  
Cause called. Hilda Scheib argued for appellant Smith. Jeffrey Laurance argued for respondent People of the State of California. Cause submitted.

At this point, Rivera, J. left the bench and Sepulveda, J. joined the bench. Argument continued before Ruvolo, P.J., Reardon, J., and Sepulveda, J.

A118921     Chin  
              v.  
              State of California Department of Industrial Relations  
Cause called. Stephanie Rubinoff argued for appellant Chin. Christopher W. Frick argued for respondent State of California. Cause submitted.

At this point, Reardon, J. left the bench and Rivera, J. rejoined the bench. Argument continued before Ruvolo, P.J., Sepulveda, J., and Rivera, J.

A121150     People  
              v.  
              Charles Christman  
Cause called. Lindy Hayes argued for appellant Christman. John Deist argued for respondent People of the State of California. Cause submitted.

A121688     In re the Marriage of J.H. and Y.A.  
              J.H.  
              v.  
              Y.A.  
Cause called. Barbara Kauffman argued for appellant Y.A. David  
Ostiller                argued for respondent J.H. Cause submitted.

*Morning session recessed at 10:27 a.m.*

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, August 18, 2009

The Court reconvened at 1:30 p.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Ruvolo, P. J., Sepulveda, J., and Rivera, J.; Annie Reasoner, Deputy Clerk; CHP Officer Bobby Singh, Bailiff.

A120471 Gary Alexander, et al,  
v.  
David J. Cook, et al  
Cause called. Anthony Poidmore appeared by telephone conference and argued for appellant Alexander. Julian Pardo de Zela argued for respondent Cook.  
Cause submitted.

At this point, Rivera, J. left the bench and Reardon, J. joined the bench.  
Argument continued before Ruvolo, P.J., Reardon, J. and Sepulveda, J.

A122023 Banc of America Investment Services  
v.  
Dermot J. Durnin  
Cause called. Ronald Gruzen argued for appellant Banc of America. John Huston Scott argued for respondent Durnin. Cause submitted.

At this point, Ruvolo, P.J. left the bench and Rivera, J. rejoined the bench.  
Argument continued before Reardon, Acting P.J., Sepulveda, J. and Rivera, J.

A121167 Marie O'Gilvie, et al  
v.  
Kaiser Hospitals  
Cause called. William Simpich, Jr. appeared by telephone and argued for appellant O'Gilvie. Brian Lee argued for respondent Kaiser. Cause submitted.

*Court adjourned at 2:35 p.m.*

Tuesday, August 18, 2009(Continued)

Division Five

**A121809 – Timothy J. Owen, v. Stephen P. Sands, as Register of Contractors, etc.**

By The Court: The written opinion filed on July 28, 2009, is certified for publication pursuant to rule 8.1105(b) of the California Rules of Court, and it is ordered published in the official reports. Jones, P.J.

Wednesday, August 19, 2009

Division Three

**A121525 – Carin Salter et al., v. Glenn Lerner.**

By The Court: IT is ordered that the opinion filed herein on July 28, 2009, be modified as follows: (See Order.) The opinion in the above-entitled matter was not certified for publication in the Official Reports. For good cause it now appears that the opinion should be published in the Official Reports and it is so ordered. Pollak, Acting P.J. (Certified for Publication.)

Division Four

**A119808, A120069 – In re the Marriage of Natalia A. Sidiakina and Siamak Navid. Natalia A. Sidiakina, v. Siamak Navid.**

The judgment is affirmed, as are the numerous orders that appellant purports to challenge. Respondents is entitled to recover his costs on appeal. Reardon, J., We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

**A122628 – Michael Edward Rose, v. Board of Behavioral Sciences.**

The judgment is reversed. The trial court is directed to enter an order denying Rose's petition for writ of administrative mandamus. Costs on appeal are awarded to the Board. Ruvolo, P.J., We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

**A120335 – The People, v. Antoine Ramont Carruth.**

The judgment is affirmed. Reardon, Acting P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Thursday, August 20, 2009

Division Two

**A118740 – The People, v. Franklin Carter Lowery.**

The judgment is affirmed. Richman, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Five

**A120753 – Alfred J Antonini et al., v. CMR Mortgage et al.**

By The Court: The petition for rehearing is denied.

MINUTES  
COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

Thursday, August 20, 2009

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J., Simons, J., Needham, Jr., J., Bruiniers, J., and Joshua Chow, Deputy Clerk.

A12189    Citizens for Civic Accountability,  
9            v.  
            Town of Danveill,  
            Davidon Homes,  
            Cause called and argued by Brian Gaffney, counsel for appellant, and by Stephen  
            Kostka, counsel for respondent. Causes ordered submitted.

At this point in the proceedings Justice Needham left the bench and Justice Bruiniers entered.

A12185    Wendell Row et al.,  
7            v.  
            Carl Schneider et al.,  
            Cause called and argued by Michael T. Morrissey, counsel for appellants, and by  
            Andrew Stunich, Timothy Nisson, John Kelly, Donald T. McMillan, counsels for  
            respondents. Causes ordered submitted.

A12172    Todd Beth et al.,  
9            v.  
            Everett Doughty,  
            Cause called and argued by Peter Simon, counsel for appellants, and by Ethan A.  
            Glaubiger, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Jones left the bench and Justice Needham entered.

A12032    Rafael Tapia Jr et al.,  
2            v.  
            State of California,  
            Cause called and argued by Joseph W. Carcione Jr., counsel for appellants, and by



Wilfred Fong, counsel for respondent. Cause ordered submitted.

A11961    The People,  
5            v.  
             Jason Quiles,  
Cause called and argued by Paul Kleven, counsel for appellant, and by Catherine A. McBrien, counsel for respondent. Cause ordered submitted.

A12287    Demas Yan et al.,  
6            v.  
             Tony Fu,  
Cause called and argued by John Chu, counsel for appellant. Cause ordered submitted.

A11940    The People,  
4            v.  
             Ryan Brian Bui,  
Cause called and argued by Dennis Patrick, counsel for appellant, and by John Vance, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Simons left the bench and Justice Jones entered.

A12370    Jerrold Karmin,  
1            v.  
             Marine Express,  
Cause called and argued by Gary Goyette, counsel for appellant, and by Marilyn Raia, counsel for respondent. Cause ordered submitted.

A11970    Ze Wei Chen,  
1            v.  
             Leo Zhao et al.,  
Cause called and argued by Robert Rusky, counsel for appellant, and by Peter Snow, counsel for respondent. Cause ordered submitted.

Court adjourned at 12:25 p.m.

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Friday, August 21, 2009

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Margulies, Justice, Graham, Judge of the Marin County Superior Court [Ret.], assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution, Fred Abad, Deputy Clerk, and CHP Officer James Militar, Bailiff.

- A120088 People,  
v.  
Pedro Joaquin Olivas.  
Cause called and argued by Peter Gold, counsel for appellant via teleconferencing, and Donna Provenzano, counsel for respondent. Cause ordered submitted.
- A119521 Margaret Seltzer,  
A119049 v.  
William Gwire.  
Cause called and argued by Margaret Seltzer, appellant in propria persona, and William Gwire, respondent in propria persona. Cause ordered submitted.
- A121945 Estate of Maureen K. Salaman.  
Sean Morton, et al.,  
v.  
Jerry Roberts, et al.  
Cause called and argued by Sean Morton, appellants in propria persona, and Jonathan Wolf, counsel for respondents. Cause ordered submitted.
- A121577 Judy Oxford,  
v.  
Foster Wheeler.  
Cause called and argued by Frederick Baker, counsel for appellant, and Gil Purcell, counsel for respondent. Cause ordered submitted.

Continued

A122489 Warren C. Havens, et al.,

v.

Mobex Network Services, et al.

Cause called and argued by Patrick Richard, counsel for appellants, and Eugene Hahm, counsel for respondents. David Newduff, co-counsel for respondent appeared but did not argue. Cause ordered submitted.

Court recessed until 1:30 p.m.

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Friday, August 21, 2009

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Margulies, Justice, Graham, Judge of the Marin County Superior Court [Ret.], assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution, Fred Abad, Deputy Clerk, and CHP Officer Jeff Borgen , Bailiff.

- A122038 Joan Mahoney,  
v.  
Georgia Pacific.  
Cause called and argued by Blanca Young, counsel for appellant, and Denyse Clancy, counsel for respondent. Cause ordered submitted.
- A122920 Cliff Gardner, et al.,  
v.  
Arnold Schwarzenegger, as Governor, etc., et al.  
Cause called and argued by Kathleen Lynch, counsel for appellants, and Stacey Leyton, counsel for respondents. Cause ordered submitted.
- A123743 Paul Cummings,  
v.  
Walter Stanley, III.  
Cause called and argued by George Benetatos, counsel for appellant, and Gerald Salcido, counsel for respondent. Cause ordered submitted.

Court Adjourned

Friday, August 21, 2009(Continued)

Division Two

**A120049 – Sequoia Park Associates, v. County of Sonoma.**

The order is reversed, and the cause is remanded to the trial court with directions to enter a new order or judgment consistent with this opinion. Sequoia shall recover its costs. Richman, J., We Concur: Haerle, Acting P.J., Lambden, J. (Certified for Publication.)

Division Three

**A124056 – The People, v. Reid William Rogers.**

The judgment is affirmed. Siggins, J., We Concur: Pollak, Acting P.J., Jenkins, J. (Not for Publication.)

Division Four

**A121442 – The People, v. Ulysses Terrell Johnson, Jr.**

The order placing defendant on probation is affirmed. Sepulveda, J., We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

**A120657 & A121731 – Tammy Cabral., v. Edward E. Martins et al.**

The order granting the attorney respondents' special motions to strike, and the order awarding them attorney fees, are affirmed. The attorney respondents are awarded their attorney fees and costs on appeal, and the case is remanded to the trial court for a determination as to the appropriate amount of such attorney fees. Ruvolo, P.J., We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Monday, August 24, 2009

Division One

**A122674 – The Hospital Committee for The Livermore-Pleasanton Area, v. City of Oakland.**

The judgment is reversed, with directions to enter judgment for the City.  
Marchiano, P.J., We Concur: Margulies, J., Graham, J.<sup>13</sup> (Certified for Publication.)

Monday, August 24, 2009(Continued)

Division Two

**A121665 – John Delois, v. Barrett Block Partners et al.**

The order appealed from is reversed. Costs on appeal are awarded to plaintiff and appellant Delois. Haerle, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Division Four

**A119671 – The People, v. Vera Inez Rehfeld.**

The judgment is affirmed. Rivera, J., We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

**A120976 – The People, v. Judlin Jeanlouis.**

The conviction of assault (§ 240) is reversed. In all other respects, the judgment is affirmed. The trial court is directed to enter dismissal of this charge, to prepare an amended abstract of judgment reflecting a conviction of section 242 in count V, and to forward the amended abstract to California's Department of Corrections and Rehabilitation. Rivera, J., We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Division Five

**A122197 – The People, v. Jose Jesus Arevaloherrera.**

The judgment is affirmed. Needham, J., We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Tuesday, August 25, 2009

Division One

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<sup>13</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A124512 – In re B.C., a Person Coming Under the Juvenile Court Law. The People, v. B.C.**

The judgment is affirmed. Dondero, J., We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A122100 – The People, v. Nathaniel Askew.**

Tuesday, August 25, 2009(Continued)

The judgment is affirmed. Marchiano, P.J., We Concur: Margulies, J., Graham, J.<sup>14</sup> (Not for Publication.)

**A122241 – Kudsk Construction, Inc., v. Moraga-Orinda Fire District.**

Accordingly, the demurrer was properly sustained without leave to amend and the judgment in favor of defendant is affirmed. Costs on appeal are awarded to defendant. Graham, J.<sup>15</sup> We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Three

**A123318 – Joel v. Haro et al., v. Bobby Lee et al.**

The judgment is affirmed. Siggins, J., We Concur: Pollak, Acting P.J., Jenkins, J. (Not for Publication.)

**A120858 – In re the Marriage of J. Russell Pitto and Valerie Behrendt. J. Russell Pitto, v. Valerie Behrendt.**

The trial court's pendent lite orders for temporary spousal support and attorney fees are affirmed. Jenkins, J., We Concur: McGuinness, P.J., Pollak, J. (Not for Publication.)

**A123740 – Rural Media Arts and Education Project, v. Susan Hildreth, as State Librarian, etc., et al.**

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<sup>14</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>15</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

The order denying attorney fees is affirmed. Pollak, J., We Concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

Division Four

**A120293 – The People, v. Gregory Allen Cannedy.**

By The Court: The opinion filed July 31, 2009, has now been certified for publication, and it is hereby ordered that said opinion be published in the Official Reports. Ruvolo, P.J. (Certified for Publication.)

**A119997 – The People, v. Andrew Dale Powers.**

The judgment is affirmed. Reardon, J., We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

Tuesday, August 25, 2009(Continued)

Division Five

**A120322 – Rafael Tapia et al ., v. State of California.**

The judgment is affirmed. Needham, J., We Concur: Simons, Acting P.J., Bruiniers, J. (Not for Publication.)

**A121857 – Charles Tuttle et al., v. Carl Schneider et al.**

The court's SLAPP rulings and the resulting judgments are affirmed. Jones, P.J., We Concur: Simons, J., Bruiniers, J. (Not for Publication.)

Wednesday, August 26, 2009

Division One

**A121222 – Eric Bachelor et al., v. Blackhawk Homeowners' Association.**

The trial court's order awarding \$175,500 to the BHOA pursuant to Code of Civil Procedure section 2033.420 is reversed. In all other respects, the judgment is affirmed. Graham, J.<sup>16</sup> We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

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<sup>16</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.



Division Two

**A119043, A120366, A120512 – John G. Polk, as Executor, etc., v. Susan Polk.**

**A122220 – In re Susan Polk on Habeas Corpus.**

The purported appeal in No. A119043 is dismissed. The challenged orders in Nos. A120366 and A120512 are affirmed. The petition for habeas corpus (No. A122220) is summarily denied. Susan has applied for certain costs on appeal under the appropriate rule, but that rule provides that where, as here, this court dismisses an appeal or otherwise affirms, the respondent, not the appellant, is prevailing party entitled to costs. (Cal. Rules of Court, rule 8.278(a)(2).) Kline, P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

**A122311 – John G. Polk, as Executor, etc., v. Susan Polk.**

The challenged orders of February 5 and March 4, 2008, are affirmed. Ordinary costs, if incurred, go to respondent. (Cal. Rules of Court, rule 8.278(a)(2).) Kline, P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

Wednesday, August 26, 2009(Continued)

**A117122 – The People, v. Darren Ray Pratcher.**

By The Court: It is ordered that the opinion filed herein on July 30, 2009, be modified as follows: (See Order.) Appellant's petition for rehearing is denied. Kline, P.J. (Not for Publication.)

Division Three

**A122843 – The People, v. Carmella Helming.**

The order granting defendant's motion to suppress is reversed. The matter is remanded to the trial court for further proceedings. Pollak, J., We Concur: McGuiness, P, J., Siggins, J. (Not for Publication.)

MINUTES  
COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Wednesday, August 26, 2009

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Pollak, J., and Siggins, J.; and F. Castuera, Deputy Clerk.

A123860 James Steele,  
v.  
Chris Spina et al.  
Cause called and argued by Charles Kinney, counsel for appellant, and Joseph Ryan, counsel for respondent. Cause ordered submitted.

At this time in the proceedings, McGuiness, P.J. left the bench and Pollak, J. presided over the last case. Pollak, Acting P.J. explained to counsel that Jenkins, J. was not present; however, he will listen to the audio recording of the oral argument. Both counsel have no objections.

A123506 Daryl Chilimidos  
v.  
Warren Rupf, as Sheriff, etc. et al.  
Cause called and argued by William Sortor, counsel for appellant, and Esther Milbury, counsel for respondents. Cause ordered submitted.

COURT ADJOURNED

Wednesday, August 26, 2009(Continued)

Division Four

**A120422 – The People, v. Thomas Anthony Payne.**

The judgment is reversed as to appellant's count two conviction for possession of a firearm by a person previously convicted of a felony (§ 12021, subd. (a)(1))). In all other respects, the judgment is affirmed. Ruvolo, P.J., We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Division Five

**A119701 – In re the Marriage of Ze Wei Chen and Leo Zhao. Ze Wei Chen, v. Leo Zhao.**

The judgments entered on August 20, 2007 and April 3, 2008 are affirmed. In the interests of justice, each party shall bear his or her own costs on appeal. Needham, J., We Concur: Jones, P.J., Bruiniers, J. (Not for Publication.)

**A115777 – The People, v. Greshinal Green et al.**

The judgments are affirmed.<sup>17</sup> In addition, the trial court is directed to stay the sentences of all appellants on the count 5 conspiracy convictions and to modify appellants' abstracts of judgment in accordance with this opinion. Bruiniers, J., We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

**A121097 – The People, v. Ray Madrinan Rana.**

The judgment is affirmed. Bruiniers, J., We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

**A119365 – Susan David et al., v. Wendy Alter Hermann.**

By The Court: It is ordered that the opinion filed herein on August 3, 2009, be modified as follows: (See Order.) The petition for rehearing is denied. Marchiano, P.J. (Not for Publication.)

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<sup>17</sup> In a separate petition for writ of habeas corpus, Appeal No. A121967, appellant Jordan has claimed that her trial counsel provided ineffective assistance. We have denied that petition by separate order filed this date.

Thursday, August 27, 2009

Division One

Thursday, August 27, 2009(Continued)

**A121626, A122785 – SF Wharf Enterprises, Inc., v. W.W. Wharf GL, Inc., et al.**

The judgment of the trial court is affirmed. Margulies, J., We Concur: Marchiano, P.J., Graham, J.<sup>18</sup> (Not for Publication.)

**A121943 – Johnson Su, v. Lien Ping Chen et al.**

The judgment is affirmed. Margulies, J., We Concur: Marchiano, P.J., Graham, J.<sup>19</sup> (Not for Publication.)

**A123321 – James Karim Muhammad, v. Eden Housing Management, Inc.**

Accordingly, the judgment is affirmed. Graham, J.<sup>20</sup> We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

**A124230 – The People, v. Edward Arlo Blake.**

The judgment is affirmed. Haerle, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

**A118369 – The People, v. Nicolas Eric Appice.**

The judgment is affirmed. Lambden, J., We Concur: Haerle, Acting P.J., Richman, J. (Not for Publication.)

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<sup>18</sup> Retired judge of the Marin County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>19</sup> Retired judge of the Marin County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>20</sup> Retired judge of the Marin County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A124521 – In re K.B. et al., Persons Coming Under the Juvenile Court Law. Mendocino County Department of Health and Social Services, v. Bonnie M.**

The juvenile court's orders are affirmed and appellant's ineffective assistance of counsel claim is denied. Lambden, J., We Concur: Haerle, Acting P.J., Richman, J. (Not for Publication.)

Division Three

**A121951 – In re Melissa R., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency, v. S.V.**

Thursday, August 27, 2009(Continued)

The orders of the juvenile court are affirmed. Siggins, J., We Concur: McGuinness, P.J., Jenkins, J. (Certified for Partial Publication.)

**A122809 – Rama Diop, v. Richard Meredith Owens, Marin County Department of Child Support Services.**

The appeal is dismissed. Pollak, Acting P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

Division Five

**A122391 – In re Andre C., a Person Coming Under the Juvenile Court Law. The People, v. Andre C.**

The disposition is affirmed. Jones, P.J., We Concur: Simons, J., Bruiniers, J. (Not for Publication.)

**A123701 – Jerrold Karmin, v. Marine Express, Inc.**

The judgment is reversed and the superior court is ordered to reinstate the Labor Commissioner's award in favor of appellant (\$11, 355.05 in overtime wages, \$1,813.69 in interest on those wages, and \$8,400.00 in penalties).

Appellant is also entitled to costs and reasonable attorney fees on appeal. (Lab. Code, § 98.2, subd. (c).) We remand the case to the trial court for a determination of attorney fees and costs and any additional interest to which appellant may be entitled. Needham, J., We Concur: Simons, Acting P.J., Bruiniers, J. (Not for Publication.)

**A121512 – The People, v. Felipe Ramirez Valle.**

By The Court: The opinion filed on July 31, 2009, is modified as follows: (See Order.) Appellant's petition for rehearing is denied. Jones, P.J. (Not for Publication.)

**A122723 – Franchise Tax Board, v. The Superior Court of The City and County of San Francisco, Tom Gonzalez, as Personal Representative, etc., R.P.I.**

The order to show cause is discharged. The petition is granted in part. Let a peremptory writ of prohibition issue restraining respondent superior court from enforcing its order of July 22, 2008, to the extent it permits a jury trial as to petitioner's cross-writ proceeding. (Cal. Rules of Court, rule 8.493.) Simons, J., We Concur: Jones, P.J., Needham, J. (Certified for Publication.)

**A122630 – David Paland, v. Brooktrails Township Community Services District Board of Directors.**

By The Court: The opinion filed on July 31, 2009, is modified as follows: On page 8, footnote 12, delete the last sentence: "Paland does not argue that a  
Thursday, August 27, 2009(Continued)

service, such as the sewer service, cases to be "immediately available" when a property owner simply stops using it." This modification does not change the judgment. Appellant's petition for rehearing is denied. Jones, P.J. (Certified for Publication.)

Friday, August 28, 2009

Division One

**A120846 – Alberto Martinez, v. P.J.'s Lumber, Inc., et al.**

The judgment is affirmed. Graham, J.<sup>21</sup> We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A123478 – South 125 Dealer, v. Vehicle Inspection Systems, Inc.**

The judgment is affirmed. Marchiano, P.J., We Concur: Margulies, J., Graham, J.<sup>22</sup> (Not for Publication.)

Division Three

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<sup>21</sup> Retired judge of the Marin County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>22</sup> Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A119931 – First American Title Insurance Company, v. Xwarehouse Lending Corporation formerly known as Access Lending Corporation.**

The judgment is affirmed. First American Title Insurance Company is awarded costs. McGuiness, P.J., We Concur: Pollak, J., Siggins, J. (Certified for Publication.)

**A123506 – Daryl L. Chilimidos, v. Warren E. Rupf, as Sheriff, etc., et al.**

The judgment is affirmed. Siggins, J., We Concur: Pollak, Acting P.J., Jenkins, J. (Not for Publication.)

**A123860 – James Steele et al., v. Chris Spina et al.**

The orders of the trial court are affirmed. Siggins, J., We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

Division Four

Friday, August 28, 2009(Continued)

**A122047 – In re S.D., a Person Coming Under the Juvenile Court Law. The People, v. S.D.**

We reverse the court's order sustaining counts 3 and 13. The matter is remanded to the juvenile court for recalculation of the maximum term of confinement and the court is directed to enter a stay on the term attributable to count 5. In all other respects, the order is affirmed. Rivera, J., We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

**A124520 – The People, v. Kenneth Fonda Partridge.**

Judgment is affirmed. Reardon, Acting P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

**A118184 – The People, v. Jorge Javier Martinez.**

The judgment is affirmed. Rivera, J., We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

**A122874 – The People, v. James Wesley Doyle.**

The judgment is modified to impose the middle term of 36 months in state prison rather than the upper term of 48 months. As so modified, the judgment is affirmed. The trial court is directed to prepare a corrected abstract of judgment and forward it to the

Department of Corrections and Rehabilitation. Ruvolo, P.J., We Concur: Reardon, J., Rivera, J. (Not for Publication.)

Monday, August 31, 2009

Division One

**A120989 – The People, v. LeManuel Anthony Cox.**

Accordingly, the judgment is affirmed. Graham, J.<sup>23</sup> We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A122700 – The People, v. Kenneth Adrian Fuller.**

The judgment is affirmed. Graham, J.<sup>24</sup> We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A123355 – Michael Joseph Johnson et al., v. Michael Scott Posey.**

Friday, August 28, 2009(Continued)

The judgment is affirmed. Marchiano, P.J., We Concur: Margulies, J., Graham, J.<sup>25</sup> (Not for Publication.)

**A124245 – The People, v. Aric Brandon Miles.**

We find no arguable issues that require further briefing and accordingly, affirm the judgment. Margulies, J., We Concur: Marchiano, P.J., Graham, J.<sup>26</sup> (Not for Publication.)

**A123993 – In re K.M., a Person Coming Under the Juvenile Court Law. San Francisco City and County Department of Human Services, v. Ana S. et al.**

The order of the juvenile court is affirmed. Margulies, J., We Concur: Marchiano, P.J., Graham, J.<sup>27</sup> (Not for Publication.)

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<sup>23</sup> Retired judge of the Superior Court of Marin County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>24</sup> Retired judge of the Superior Court of Marin County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>25</sup> Retired judge of the Superior Court of Marin County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

<sup>26</sup> Retired judge of the Superior Court of Marin County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.



Division Two

**A123599 – In re Luis F., a Person Coming Under the Juvenile Court Law.  
The People, v. Luis F.**

The judgment, with the condition of probation so modified, is affirmed. Richman, J., We Concur: Kline, P.J., Lambden, J. (Certified for Partial Publication.)

**A123207 – The People, v. John Thomas Vincent.**

The judgment of conviction is affirmed. Richman, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A123296 – Estate of Gladys Mildred Lensch, Deceased. Jason Lensch, et al., v. Darin Wright, as Executor of the Estate of Jay A. Lensch.**

The order is reversed and the cause is remanded for an evidentiary hearing consistent with the views expressed in this opinion. Appellants shall recover costs on appeal. Haerle, Acting P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

**A122910 – Estate of George Edward Marbley, Deceased. Sharon Marbley, v. Carolyn Marbley.**

Monday, August 31, 2009(Continued)

The order appealed from is affirmed. Haerle, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

**A123373 – In re Ronnie H., a Person Coming Under the Juvenile Court Law.  
San Francisco Human Services Agency, v. Nicole W.**

The dispositional order is affirmed. Richman, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

**A121866 – The People, v. Jason Darn.**

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<sup>27</sup> Retired judge of the Superior Court of Marin County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

The judgment is affirmed. Jenkins, J., We Concur: McGuiness, P.J., Pollak, J.  
(Not for Publication.)

**A124187 – In re A.S., a Person Coming Under the Juvenile Court Law. The People, v. A.S.**

The dispositional order is affirmed. McGuiness, P.J., We Concur: Pollak, J., Jenkins, J. (Not for Publication.)

**A123502 – Gary Drocco, v. Edward P. Ortega et al.**

The judgment is reversed and the matter is remanded to the trial court with directions to grant Drocco leave to file an amended complaint. Siggins, J., We Concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

Division Four

**A122183 – The People, v. Joseph Burton.**

The judgment is affirmed. Ruvo, P.J., We Concur: Sepulveda, J., Rivera, J.  
(Certified for Partial Publication.)

**A124597 – The People, v. Conrado Fierros, Jr.**

The judgment is affirmed. Sepulveda, J., We Concur: Ruvo, P.J., Rivera, J.  
(Not for Publication.)

Division Five

**A121546 – The People, v. Raekubian Alexander Barrow.**

The judgment is affirmed. Jones, P.J., We Concur: Simons, J., Needham, J.  
(Not for Publication.)

Monday, August 31, 2009(Continued)

**A121631 – Page Mill Management, LLC, et al., v. City of East Palo Alto et al.**

The trial court's order is affirmed with the exception of the language prohibiting City from taking any action contrary to the trial court's statement of decision, and we therefore vacate that portion of the order. The parties shall bear their own costs on appeal. Simons, J., We Concur: Jones, P.J., Needham, J. (Not for Publication.)